

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK  
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JACOB FETMAN )  
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) CASE NUMBER 15-43716  
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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE NANCY HERSHY LORD  
February 2, 2016  
271-C Cadman Plaza East  
BROOKLYN, NEW YORK 11201-1800

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Proceedings recorded by mechanical stenography,  
transcript produced by computer.

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1 Hearing re:

2 [33[ Motion to Authorize/Direct bidding  
3 procedures for the sale of Real Property Filed by Bruce  
4 Weiner on behalf of Robert J. Musso.

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1                   COURT CLERK: Matter number 27 in the case of  
2 Jacob Fetman.

3                   MR. CARLEBACH: Everybody else appears to be in  
4 the hall.

5                   THE COURT: You might want to invite them in.

6                   Appearances please. Let's do the right side of the  
7 room, and then left side of the room.

8                   MR. CARLEBACH: David Carlebach, representing the  
9 Debtor Jacob Fetman.

10                  MR. LEFKOWITZ: Good afternoon, for Moshe Fetman,  
11 and [Inaudible] Fetman, Jon Arie Lefkowitz.

12                  MR. CITRON: Good afternoon. Andrew Citron, C-i-  
13 t-r-o-n for Tamara Fetman. She filed objections to the  
14 motion. Has also recently filed Adversary Proceeding.

15                  MR. WEINER: Bruce Weiner, Rosenberg Musso &  
16 Weiner for Robert Musso, Trustee.

17                  MR. MUSSO: Robert Musso, Trustee.

18                  MR. FRANKEL: Mark Frankel, Backenroth Frankel &  
19 Krinsky attorneys for Aish, New York.

20                  THE COURT: Okay. I'm a little fuzzy about a few  
21 things. Mr. Citron?

22                  MR. CITRON: Yes.

23                  THE COURT: If it is Mrs. Fetman's -- Ms. Tamara --  
24 we'll use first names because we have a lot of Fetmans.  
25 It's Tamara Fetman's position that she really is on the

1 title, and even though her name was crossed off, and we  
2 don't know what those initials mean, or whatever. But if  
3 she in fact is on the title. Let's pretend that wasn't  
4 there.

5 And if it's the Debtor's position, and Tamara's  
6 position that they hold mere legal title and not equitable  
7 title, because equitable title belongs in her in-laws. Why  
8 are we going through the trouble of bringing an Adversary  
9 Proceeding to stop a sale when she has conceded by her own  
10 words no equitable right to the property.

11 MR. CITRON: Uh --

12 THE COURT: Explain that to me?

13 MR. CITRON: That's not her position.

14 THE COURT: I read the papers.

15 MR. CITRON: I understand. But her position is  
16 the same as the Debtor.

17 THE COURT: I know.

18 MR. CITRON: Okay.

19 THE COURT: And the Debtor's position is, at least  
20 I thought was, unless I haven't read Debtor's papers lately,  
21 that -- I thought the Debtor's position was in agreement  
22 with the parent's position.

23 MR. CITRON: Again, she's one step removed because  
24 she wasn't directly involved in whatever agreement --

25 THE COURT: Answer my question.

1 MR. CITRON: Okay.

2 THE COURT: You just said it was the Debtor's  
3 position.

4 MR. CITRON: Okay.

5 THE COURT: The Debtor's position is I thought in  
6 alignment with the parent's position.

7 MR. CITRON: Ms. Fetman's position, I think it's  
8 similar to the Trustee's position is that the people in the  
9 -- the starting point is the people in the deed are the  
10 owners. Their parents have alleged that there's a  
11 constructive trust.

12 If they win, they're the owners. If they lose Ms.  
13 Fetman is the owner. The real owner, the complete owner,  
14 the owner in every --

15 THE COURT: We are -- what we're not doing in this  
16 court is game playing with me. Okay? We're not doing  
17 that. We don't have different [inaudible] to go to. We  
18 don't have different state courts to go to. You're stuck  
19 with me. I'm going to hear it all. I'm going to do it  
20 all. You are stuck with me. Okay? And I'm going to read  
21 it all.

22 MR. CITRON: If I may, Your Honor --

23 THE COURT: And it's got to make sense to me. You  
24 have a legal problem with a constructive trust argument.  
25 You need to study the law.

1           Either, I mean I get it. I don't want to hurt  
2 anybody here. But either you're playing games, or you're  
3 not doing your job as lawyers. And you're not reading what  
4 the law is. I'm not sure which.

5           I don't, you know, I want to warn everybody about  
6 perjury. I want to warn everybody about a whole bunch of  
7 things. Bankruptcy crimes, IRS fraud. I don't know. I  
8 mean be careful when you argue what you argue. Because  
9 it's all going to be here. And I'm going to deal with it  
10 all.

11           MR. CITRON: I think --

12           THE COURT: So, understand that. And I think you  
13 know that from other cases too. It's here and it's  
14 serious.

15           MR. CITRON: Absolutely.

16           THE COURT: And we're not going to play games. So  
17 in one breath to say to me that the -- for somebody to say  
18 to me who is aligned with your client that no, we don't  
19 really own it. Okay? And I have all these papers from  
20 Moshe Fetman and his wife, we are the owners. Somebody  
21 should tell them that in the United States of America, to  
22 be an owner of real property means to be an owner of real  
23 property. You need to be the owner. It's [inaudible].  
24 It's about fee title. Okay?

25           And if it's not about fee title, it's hard. It's

1 hard to prove. Okay? And it's a real hard thing to prove  
2 in the Second Circuit, and in the Eastern District. And I  
3 will talk about the law that applies.

4 So, but to basically -- what really is happening  
5 here, I think, is you're going to use every single argument  
6 instead of facts. And anything else inconsistent or not.  
7 Throw inconsistency to the wind, in order to block  
8 liquidation of properties for the benefit of creditors,  
9 whoever they may be. And maybe it's going to be Aish for  
10 twenty million dollars, or it's going to be Aish for a  
11 smaller amount of money. Or whoever the creditor body is.

12 But we're not going to play games. Are we clear  
13 about that, everybody? Everybody? Okay.

14 So again, your Adversary Proceeding is not on  
15 today. But to again in one breath tell me that you don't  
16 have legal title. And the next -- you don't have equitable  
17 title. You have merely legal title, and maybe your client  
18 doesn't even have mere legal title. Okay? So we have to  
19 go, we have to spend a lot of money.

20 Other thing you all should be aware of, is that the  
21 more money that's being spent here, the higher their  
22 expenses of administration are. And the less money there  
23 will be for anybody at the the end of the day. So if there  
24 are guarantors or other liabilities, or other things out  
25 there, this is not constructive because again, they have an

1 obligation to do what they're doing.

2 So to say in one breath that you have -- that you  
3 have mere legal title, and that equitable ownership belongs  
4 elsewhere, and that's why the Trustee shouldn't do it. And  
5 then the next breath to say, oh no, but if in fact we don't  
6 have equitable title, we have it all, then the Trustee  
7 can't sell. Or the Trustee could sell under circumstances  
8 in any event in those situations.

9 So okay. You can sit down.

10 With respect to the constructive trust argument I  
11 want everybody to go do some homework. Maybe some of you  
12 have read the decision. My -- and she is my very learned  
13 colleague Chief Judge Craig -- wrote a decision about  
14 constructive trust arguments. Had to do with a vehicle,  
15 personal property but it's almost an *a fortiori* situation  
16 to real property.

17 And that's the case called *in re NFM Balgobin*, B-a-  
18 l-g-o-b-i-n. It was actually Delser [ph.], as Trustee for  
19 the estate of Balgobin against Mark Balgobin. This was a  
20 fairly simple situation that comes up a lot. This kind of  
21 idea of the Debtor has just legal title and really somebody  
22 else has the rights and ownership and whatever ownership  
23 means to it.

24 It comes up a lot. People do you know, Medicaid  
25 transfers. They do all kinds of things. And they transfer

1 things, parents transfer things to children. And in this  
2 case somebody, a kid, doesn't have the credit to buy a car  
3 so the parent Debtor buys the car. You know, it's -- this  
4 was about a car. This was about a father, son car.

5 But the law in it is quite clear. And it's based  
6 upon Second Circuit law.

7 And a case called *Superintendent of Insurance*  
8 *versus* -- *Superintendent of Insurance for New York against*  
9 *Oakes*. *In re 1st* -- I think that must be Century  
10 Financial Corporation, or some kind of Financial  
11 Corporation, 377 F 3rd 209 2nd Circuit 2004 involving  
12 trust, or trusts.

13 The short, and the long of it is, is that Judge  
14 Craig found that there are four elements. And the last one  
15 being unjust enrichment or fraud has to be there. And  
16 basically if you -- if folks are trying to create a  
17 constructive trust for intent enforcing purposes, which is  
18 all I read so far in these papers, that we need a  
19 constructive trust here for the property to go back to the  
20 parents because that was the intent. Intent enforcing use  
21 of that vehicle, the constructive trust. It has to be  
22 fraud rectifying, not intent enforcing, okay.

23 And the fraud rectifying has got to be directed at  
24 the Debtor. But you need to read these. Hopefully you all  
25 took the cite down. You need to read this. And then I'll

1 allow you to file a brief to tell me why it is, that this  
2 law again, it's Judge Craig in this district. It was in  
3 Shepardizing it, it's been followed once in the western  
4 district of New York, a District Court in a bankruptcy.

5 But again, based upon the 2nd Circuit Law having to  
6 do with how you can -- assuming you have all the four  
7 elements. But there's four elements, and the fourth one  
8 has to do with unjust enrichment, and the unjust enrichment  
9 has to do with it being again, you have to -- it has to be  
10 fraud rectifying. Not just okay, I took title to my son's  
11 car. It was always our intent that I be his car. He's  
12 paying the payments on it. He's driving it. You know, it  
13 has nothing to do with me.

14 Again, we see that all the time. We see it with  
15 real estate. We see it with cars. It's just a bad, you  
16 know, it's a bad idea. But then if you try to undo it with  
17 arguments that are not always consistent in these cases,  
18 you've got a problem. All you're trying to do is get to  
19 what the intent was, as opposed to rectifying fraud.

20 So you've got the cites?

21 MR. WEINER: I don't think you gave us the Judge --

22 THE COURT: The cite for the 2nd Circuit?

23 MR. WEINER: No, the cite for the 2nd Circuit you  
24 did. But not Judge Craig's.

25 THE COURT: Oh, Judge Craig's case I'm sorry, is

1 490 BR13. It's a March 22, 2013.

2 And just to give you a flavor, I'm just reading  
3 from the middle. In considering whether to impose a  
4 constructive trust in a bankruptcy case the 2nd Circuit is  
5 cautioned that while bankruptcy law does not trump state  
6 constructed trust law, Bankruptcy Court should act very  
7 cautiously in deciding whether to oppose a constructive  
8 trust on property that otherwise would be property of the  
9 estate.

10 And then it cites that *Superintendent of Insurance*  
11 *versus Ochs* case. It also cites Ades and Berg Group  
12 Investors.

13 As the 2nd Circuit explained, the chief purposes of  
14 the bankruptcy laws are to secure a prompt and effectual  
15 administration and settlement of the estate of all  
16 bankrupts within a limited period, to place the property of  
17 the bankrupt, wherever found, under the control of the  
18 court, for equal distribution among the creditors, and to  
19 protect the creditors from one another. But by creating a  
20 separate allocation mechanism outside the scope of the  
21 bankruptcy system, the constructive trust doctrine can  
22 wreak havoc with the priority system ordained by the  
23 Bankruptcy Code. There's ellipses. We believe it  
24 important to carefully note the difference between  
25 constructive trust claims arising in bankruptcy as opposed

1 to those that do not, as the equities of bankruptcy are not  
2 the equities of the common law.

3 And then further along there's a lot of, cites a  
4 lot of law in this decision. So I guess we're going to be  
5 looking at whether or not there was an expressed trust.  
6 Was there an agreement? Are you able to produce an  
7 agreement?

8 It says -- a writing that says that this property  
9 was held in the expressed trust for the parents. So  
10 expressed trust. I'm assuming you don't have that since  
11 you've been arguing constructive trust in the papers.

12 The Bankruptcy Courts are generally reluctant to  
13 impose constructive trust without a substantial reason to  
14 do so where a party seeks to impose a constructive trust  
15 against the bankruptcy estate at the expense of creditors  
16 of the estate.

17 And then he quotes another 2nd Circuit decision --  
18 she does -- *Cadle Company v. Mangan (In re Flanagan)* The  
19 effect of a constructive trust in bankruptcy is profound.  
20 While the bankrupt estate is defined very broadly under §  
21 541(a)(1) of the Bankruptcy Code to include all legal or  
22 equitable interests of the debtor, any property that the  
23 debtor holds in constructive trust for another is excluded  
24 from the estate pursuant to § 541(d).

25 And then she cites *Brenner v. Heller* a Northern

1 District decision. Finding that constructive trust claim  
2 against the estate was not warranted under the facts before  
3 it, stating that " in this case, where there are numerous  
4 other unsecured creditors equity does not support the  
5 creation of constructive trust"

6                   But then let me get to the part about fraud  
7 inducing. And the other -- oh, the other part about this  
8 decision has to do with when that constructive trust arose.  
9 Did it arise pre-petition.

10                  Although the elements of constructive trust are  
11 regarded as guideposts, unjust enrichment is the most  
12 important since the purpose of the constructive trust is  
13 prevention of unjust enrichment. Unjust enrichment is  
14 present, and thus a constructive trust may be warranted  
15 only where such relief is "necessary to satisfy the demands  
16 of justice", meaning that a party holds property under such  
17 circumstances that an equity in good conscience he ought  
18 not -- he ought not to retain it.

19                  Here I feel like he only ought not to retain it as  
20 long as there's a creditor chasing him for it, okay, as  
21 opposed to he ought not to retain it.

22                  Quote, while a showing of actual fraud, or wrongful  
23 conduct is not strictly required for constructive trust,  
24 New York law is clear that a constructive trust is an  
25 equitable remedy intended to be fraud rectifying rather

1 than intent enforcing.

2 And then they noted several instances that this  
3 First Central Case where New York State Courts declined to  
4 grant a constructive trust claims that were brought to  
5 effectuate the intent of the party, absent any misconduct  
6 by the party against whom the constructive trust is sought  
7 to be imposed.

8 And then later on, applying these principals to her  
9 case the Defendant's allegations do not support the  
10 imposition of a constructive trust. The Defendant does not  
11 claim that the Debtor attempted to repudiate their alleged  
12 agreement, and does not allege any misconduct overreaching  
13 or inequitable behavior by the Debtor. To the contrary,  
14 the Debtor and his attorney have brought affidavits in  
15 support of the Defendant's claimed interest in the vehicle.  
16 And the Debtor's attorney states the Debtor washes his  
17 hands from any claim of ownership of a vehicle.

18 The factual circumstances in this case provide a  
19 clear example of an attempt by the parties to an alleged  
20 oral agreement to utilize a constructive trust as an intent  
21 enforcing rather than a fraud rectifying remedy. Because  
22 no enforceable expressed trust exists here, the parties are  
23 seeking to invoke the remedy of a constructive trust to  
24 enforce a non-enforceable agreement. This is precisely the  
25 intent in forcing use of constructive trust that is

1 prohibitive under New York law.

2 So, if you think you can get around that in the 2nd  
3 Circuit Law, I'll take your brief.

4 Okay, now that I've said all that, you filed a  
5 motion for bidding proceedings that's contested.

6 MR. WEINER: Yes, Your Honor.

7 THE COURT: So, it had -- what I don't -- you see  
8 what I don't think is that I can do a contested matter  
9 scheduling order, but again this was done under a motion  
10 for summary judgment. I don't think that there are any  
11 issues of other than the intent issue. There aren't any  
12 issues of fact that I can see with respect to whether this  
13 is, you know -- in other words the question is whether or  
14 not you can impose a constructive trust even on your best  
15 stated facts you may not be able to here because of the law  
16 and not the facts. Unless you have an expressed trust, or  
17 unless you're going to -- someone is going to change their  
18 position again and say that the Debtor son is guilty of  
19 fraud here, which I haven't heard, so. At least from this  
20 side of the table.

21 What say you?

22 MR. WEINER: Well, I agree that we need to get  
23 these issues resolved before we can move forward with the  
24 sale of the property. The constructive trust issue has to  
25 be disposed of. We don't think that you show a

1 constructive trust for all the reasons stated by Judge  
2 Craig in those decisions. I think it's clear already that  
3 there's no constructive trust in their own arguments in  
4 their papers, you know, contradicted the Debtor's affidavit  
5 in support of the confession of judgment saying the parents  
6 loaned him the money to buy the properties. And notice it  
7 says him, rather than us. The parents motion affidavit  
8 starts off by saying I am a creditor in this proceeding.  
9 The fact that the involuntary was filed by him based on the  
10 Debtor's affidavit of confession, and he put the Debtor  
11 into bankruptcy to stop the --

12 THE COURT: No, the [inaudible] respond response  
13 in order to stop H, okay.

14 MR. WEINER: Right.

15 THE COURT: I'm not -- I mean that to me is in  
16 some way less problematic than the rest of this.

17 MR. WEINER: Right.

18 THE COURT: In the sense that very often a, you  
19 know, another creditor or somebody has an interest will  
20 file a petition to stop a sale of some kind or a judgement.  
21 I mean, I understand that.

22 MR. WEINER: I understand, but I --

23 THE COURT: Now that we have a petition, and we  
24 have an order for relief you're entitled to liquidate and  
25 you're getting pushed back. But I'm trying to see again, I

1 haven't -- I don't see -- trying to see what the argument  
2 is under the law here to -- where, how you do a pushback is  
3 going to be successful.

4 MR. WEINER: I'm not arguing that the -- if  
5 anything necessarily with the involuntary itself. But I'm  
6 just saying the fact that as of using his rights as a  
7 creditor, based on the loan of according to the Debtor in  
8 the affidavit attached to the judgment, that the very debt  
9 was loaned to the Debtor by his parents in order to  
10 purchase these properties, you know, contradicts --

11 THE COURT: It's not consistent with them being --

12 MR. WEINER: It's not consistent -- it's not  
13 consistent. And the -- and as well as the statement in  
14 Moshe Fetman's affidavit that he couldn't buy this property  
15 in his own name because he wasn't a citizen when he had  
16 just in two or three years before that bought the two  
17 properties -- contiguous properties to, you know, to that  
18 one. It's again completely contradicts that if he could --  
19 if he was able to buy those properties, he could have  
20 bought this property.

21 So none of this, you know, holds together with any  
22 kind of consistency. If the court wants briefing on the  
23 constructive trust then we will do it.

24 THE COURT: Well, you know, I'm --

25 MR. WEINER: We submit that there's enough here to

1 overrule the constructive trust.

2 THE COURT: Again, I sit here puzzled, okay. I  
3 read the papers. There wasn't a lot of law in them. And I  
4 guess what I'm really saying to the side that's raising the  
5 constructive trust show me how that possibly flies in New  
6 York or in the 2nd Circuit, or in this court. And you can  
7 show it to me in a brief if you so choose.

8 MR. LEFKOWITZ: Good afternoon, Your Honor. You  
9 should also consider please two other things. Number 1,  
10 that there was already an action filed in the New York  
11 State Supreme Court Kings County alleging the same  
12 constructive trust essentially. And it wasn't by me. But  
13 there is a pending action seeking the same relief.

14 THE COURT: Is that the one that was filed after  
15 the petition, or before?

16 MR. LEFKOWITZ: It was filed before. And what  
17 happened was Judge Demarest [ph.], across the street  
18 directed the Petitioner to file a bond if they wanted to  
19 have a say. They couldn't come up with the money for the  
20 bond therefore no say. The case still exists. However  
21 shortly thereafter that involuntary petition was filed here  
22 invoking a bankruptcy stay, and therefore nothing happened  
23 with state court case, but it's still pending.

24 THE COURT: Again, the law says I don't know that  
25 you could prove it under state law. But the law says that

1 in bankruptcy it's harder to prove.

2 MR. LEFKOWITZ: Yes, and Your Honor, you also  
3 quoted as part of the decision that one thing that does not  
4 pertain in this court, is that it does not trump state law.  
5 And precisely for the reason that you just said that it's  
6 harder to prove in this court. We should be able to go  
7 ahead in the state court --

8 THE COURT: Not in a million years.

9 MR. LEFKOWITZ: [Inaudible].

10 THE COURT: Denied.

11 MR. LEFKOWITZ: It's already [inaudible].

12 THE COURT: Don't even try.

13 MR. LEFKOWITZ: Okay. Moving on. As I said, I'm  
14 just bringing to your attention that it's been filed. And  
15 it was done before.

16 And moving on to the issues of Trustee's motion.  
17 We Mr. Fetman Senior, Moshe Fetman and Yaffa Fetman are  
18 entitled to due process. They need to file an Adversary  
19 Proceeding. There should be discovery and a trial. And  
20 there are factual issues here.

21 THE COURT: No, no, no. They don't have -- first  
22 of all they filed a motion -- they filed a motion for  
23 bidding procedures, okay. That's all they've done. And  
24 you objected to it. And you have what we call a contested  
25 matter scheduling order.

1           I don't know, and I'm not sure, again, they don't  
2 have to file Adversary Proceeding to do anything in the  
3 sense that we have -- they would have to file a proceeding,  
4 and sometimes it's done by motion. And sometimes by  
5 Adversary Proceeding, if they wanted to sell the Debtor,  
6 and the non Debtor share of the property, okay?

7           And then there's a test for that. But sometimes  
8 they can bring an Adversary Proceeding and sometimes they  
9 can do a motion. What they're trying to do is sell. So  
10 now we have an Adversary Proceeding because the deed that  
11 they have only has the Debtor's name on it.

12           MR. LEFKOWITZ: Your Honor, the --

13           THE COURT: The deed that they -- or do they have  
14 a different deed than the one that was attached to papers?

15           MR. LEFKOWITZ: No, Your Honor, but you're  
16 overlooking the second name Fetman. True, it does not have  
17 a first name, but it says Jacob Fetman, and Fetman. Now,  
18 it's either Tammy Fetman or Tamar Fetman, or maybe a  
19 different Fetman. But it is not true that it has only one  
20 name on it.

21           THE COURT: Okay, but the same people, unless it's  
22 some mysterious Fetman that's going to come in here and  
23 argue something else, the same people who would be on that  
24 assuming, yes, she was supposed to be on that. And again,  
25 we don't understand if the crossing out was the crossing

1 out, or the un-crossing out. I mean I read the papers.  
2 Tamar, Tammy, they crossed out. They un-crossed out. I  
3 don't know. Maybe there's an entirely different reason for  
4 it.

5 Bottom line is, that even if it's both of them,  
6 they've taken the position that they really don't have the  
7 right to it. The right really belongs with the parents. I  
8 don't say own.

9 I mean, Mr. Lefkowitz, how can you give me papers  
10 that say over, and over again that your clients own these  
11 properties. You're a lawyer in the State of New York. Did  
12 you ever look over the Statue of Frauds, and what reports  
13 required for a transfer of property. You need a deed.

14 MR. LEFKOWITZ: It's what we call -- what you  
15 refer to as the beneficial interest.

16 THE COURT: But that's different than saying  
17 ownership. Okay? At least put in a footnote. Just to say  
18 my client owns these properties? Let's be careful of  
19 saying things that are a little disingenuous.

20 They don't own anything. Maybe they have an  
21 equitable claim. But to say they own, they own, they own.  
22 Ownership required them to be on a deed.

23 MR. LEFKOWITZ: Your Honor, if you look at my  
24 papers you will see for example in paragraph 13 --

25 THE COURT: I did look. Didn't it begin by saying

1 --

2 MR. LEFKOWITZ: Yes.

3 THE COURT: -- my clients own --

4 MR. LEFKOWITZ: Yes, but in paragraph 13 I do say  
5 actual beneficial owners. And our claim to the actual  
6 beneficial owners is well documented. It is the claim of  
7 beneficial ownership interest. And --

8 THE COURT: All right, 541(d) is what you're  
9 asserting, 541(d) in the Bankruptcy Code. I'm hoping you  
10 don't have to write that down. You should know that.

11 MR. LEFKOWITZ: Your Honor --

12 THE COURT: That's what you're asserting.

13 MR. LEFKOWITZ: Okay.

14 THE COURT: Okay? If you're not in bankruptcy  
15 practitioner, your name may be -- I don't know if you are,  
16 or you're not, but you're not a bankruptcy practitioner you  
17 may be doing your clients a disservice.

18 541(d) says that --- 541(a) talks about property of  
19 the estate. And it is huge, it is global. It's all legal  
20 and equitable interests in the world. And then the rest of  
21 are exceptions.

22 And there is an exception. It's a limited  
23 exception. There is an exception that says if mere legal  
24 title, but equitable -- is in the Debtor -- but the total  
25 equitable beneficial interest -- naturally they use

1       mortgages as an example -- is not with the Debtor, then  
2       there is a -- then it's not property of the estate.

3           So you argue 541. He makes the motion and you are  
4       objecting to his ability to sell because you say this is  
5       not property. At least this is what you should be saying.  
6       This is not property of the estate of 541(d). Okay. And  
7       it seems to me it's your burden then to bring a Adversary  
8       Proceeding for declaratory relief that the property is not  
9       property of the estate under 541(d).

10           I don't want to, but I'm happy, I'm perfectly happy  
11       to call this a motion, a contested motion, so you don't all  
12       have to bring lawsuits. Because I would consolidate them  
13       anyway. I can do this as a contested matter, a contested  
14       matter scheduling order. And it can go along the same way  
15       as the Tammy Fetman Adversary. But I will -- I will allow  
16       for the [inaudible] of a summary judgment motion on the  
17       issue of constructive trust.

18           So I'm going to give you an opportunity to file law  
19       on why this law -- I mean, if you follow this law you're  
20       dead on arrival. And you're going to explain to me why I  
21       shouldn't follow this law. Or show me the expressed trust.  
22       Or show me something.

23           Again, bearing in mind that there are inconsistent  
24       positions here on the issue of whether or not, you know, he  
25       -- he shouldn't sell it because she's on it. But even

1 though she's on it, she and the Debtor say it's not really  
2 theirs. It's yours.

3 So again, when I say games, you know that show  
4 thing on the street, we're not going to do that here.

5 Okay. We're not. So we're going to figure out what the  
6 law is. And we're going to apply the law to the facts in  
7 this case.

8 When you say there are issues of fact, there are  
9 only issues of fact once you get past the question of  
10 whether or not you can impose a constructive trust as a  
11 matter of law. If all that you're trying to do here is not  
12 rectify fraud, but only -- what was the phrase intent --  
13 whatever I said -- to basically do what the intent of the  
14 parties was, you can't do that.

15 If you don't have unjust enrichment by the Debtor  
16 you can't do that. Or fraud by the Debtor you can't do  
17 that. So I don't have to get to the facts because as a  
18 matter of law what -- on your best argument, you don't make  
19 it.

20 If the facts, if that were not the case, then we  
21 could go down to the facts. But take a look at the  
22 positions you're arguing.

23 Didn't you also raise an issue about income taxes?

24 MR. WEINER: Yes, Your Honor. That the Debtor has  
25 used the deductions for the property on his income tax

1 returns and had the benefits of ownership for the property.

2 THE COURT: And all of this could be consistent  
3 with a loan, or a gift. And again I saw the attachments  
4 where Moshe Fetman is paying for this, or paying for that,  
5 or paying for this.

6 Again, you know, in a supportive family environment  
7 that goes on. So I'll give you -- what I'm going to do --  
8 when is the -- when is the pretrial? Probably not for a  
9 while.

10 MR. LEFKOWITZ: Thursday.

11 THE COURT: No, that's on the --

12 MR. WEINER: That's a different --

13 THE COURT: That's a different Adversary, a  
14 totally different thing.

15 MR. WEINER: That's to avoid their lien. I did  
16 that because the 363(f) we had to show that their lien on  
17 the property was contested in order to be able to invoke --

18 THE COURT: That's a lien.

19 MR. WEINER: Yes. That's all they -- the --

20 THE COURT: So wait a minute.

21 MR. WEINER: The outcome -- the pretrial --

22 THE COURT: It's the Fetman-- parents have a  
23 lien?

24 MR. WEINER: The Fetman parents have a judgment  
25 which became -- which was recorded --

1                   THE COURT:   The affidavit -- the confession of  
2 judgment became a lien on the property?

3                   MR. WEINER:   They have a lien on the property.

4                   THE COURT:   Right.

5                   MR. WEINER:   So in order to be able to sell the  
6 property free and clear of liens, I have to either have the  
7 lienholder's consent, which I do in the Aish -- for the  
8 Aish liens. But I don't for the Moshe Fetman liens, so I  
9 have to show that there is a --

10                  THE COURT:   Okay, but that's not a, I mean,  
11 putting the confession as you said earlier I guess, putting  
12 the confession of judgment on the property is not  
13 particularly consistent with.

14                  MR. WEINER:   That may be. But I have to show that  
15 there's a legitimate dispute as to whether they have a lien  
16 in order to be able to invoke 363(f). So that's the  
17 reason.

18                  THE COURT:   No, but now you have a 363(f) issue  
19 with the wife.

20                  MR. WEINER:   That just came up when they filed  
21 their papers --

22                  THE COURT:   Right.

23                  MR. WEINER:   -- just a few days ago.

24                  THE COURT:   So?

25                  MR. WEINER:   Yes, of course again those papers as

1 well didn't have any laws --

2 THE COURT: Right.

3 MR. WEINER: -- to the effect that that type of  
4 deed under New York Law. But we do have that -- we do have  
5 that issue.

6 I will say that in the event that Tamar Fetman  
7 prevails, and shows that she is a 50% owner of the  
8 property, then the Trustee can use both 363(h), and New  
9 York Partition Law to sell the property. In any event it  
10 would just -- that would just mean that she would have to  
11 get some of the net proceeds.

12 THE COURT: Right, assuming she was determined to  
13 be entitled to that.

14 MR. WEINER: Right. Assuming that she was --

15 THE COURT: And then again, nobody is -- this is  
16 not a situation where anybody lives in these properties,  
17 right?

18 MR. WEINER: No. No.

19 THE COURT: All right.

20 MR. WEINER: This is -- these are --

21 THE COURT: So the one issue I did read about is  
22 that the property in between is owned by the Fetmans of the  
23 --

24 MR. WEINER: The parents.

25 THE COURT: Moshe Fetman?

1 MR. WEINER: Yes.

2 THE COURT: Okay.

3 MR. WEINER: And has been for some time prior to -

4 -

5 THE COURT: What's, what's --

6 MR. WEINER: -- certainly prior to -- all prior to  
7 Jacob [inaudible].

8 THE COURT: What in 301, and what's in 305? Or  
9 whatever it is; 501, what's the addresses?

10 MR. WEINER: 4301 --

11 THE COURT: Oh, 301. 4301 --

12 MR. WEINER: 4301, and 4305. And the one in  
13 between is 4303.

14 THE COURT: Right. What's in 4301 -- 05? 4301  
15 give me all of it.

16 MR. WEINER: They use, I think some commercial use  
17 to the property. I think there may be a synagogue in one  
18 of them. And there's maybe also some residential tenants.

19 THE COURT: And they have leases?

20 MR. WEINER: I don't know whether there are any  
21 leases.

22 MR. LEFKOWITZ: Your Honor, yes there are leases.  
23 Yes, they are all rented. Yes, one of them has a  
24 commercial property on the ground floor. And in fact one  
25 of the leases in the name of Moshe Fetman is an exhibit to

1 my papers. And it's just one of those things that show  
2 that it's Moshe Fetman whose property it is, and not Jacob.

3 THE COURT: Moshe Fetman is listed as the  
4 landlord?

5 MR. LEFKOWITZ: As the lessor.

6 THE COURT: As the lessor, in 4301 or 4305?

7 MR. LEFKOWITZ: Yes. If you want to know exactly  
8 which one I'll find out in a few seconds. 4301.

9 THE COURT: All right, so you would be selling --  
10 you'd have to be -- you've done -- you've looked at those --  
11 have you looked at the leases to determine whether you  
12 have to, you would be selling subject to the leases?

13 MR. WEINER: We haven't gotten so far as to  
14 determine. But if it's legitimate leases we probably would  
15 be selling subject to them. We're not looking to put  
16 tenants, necessarily put tenants on -- we haven't, you  
17 know, gotten that far yet.

18 But since this was just -- the existence of these  
19 leases, and I don't even know whether we have all the  
20 leases for the two properties.

21 THE COURT: Okay, so the question is whether or  
22 not I keep the contested matter scheduling order, or I do  
23 have you file the adversary for -- file the adversary under  
24 363.

25 MR. WEINER: I could, you mean to sell the

1 estate's interest, and perhaps the interest of Tamar?

2 THE COURT: Right.

3 MR. WEINER: I could do that. We could  
4 consolidate everything.

5 THE COURT: And then we could consolidate  
6 everything. We could do -- or I again, I -- it doesn't  
7 matter. It's -- he'll get the Adversary Proceeding at the  
8 end of the day and we'll consolidate them. It doesn't  
9 matter. It's just a question of -- and then it would be  
10 more easy for you if you wanted a TF or summary judgment  
11 motion, as opposed to -- a summary judgment motion with a  
12 contested matter is kind of, you know, a little weird.

13 MR. LEFKOWITZ: Excuse me, Your Honor. My  
14 position is that that is appropriate because under Rule  
15 7001 anytime we have a contest over the ownership of the  
16 property --

17 THE COURT: Right. I was just questioning whether  
18 it's his adversary to bring or yours. But because again,  
19 on the face of it, on the face of it, you know, whatever.

20 You can bring an Adversary Proceeding for a  
21 declaratory relief. And join it with the right, sell under  
22 363, 363(f), right?

23 MR. CARLEBACH: H, 363(h), I believe.

24 THE COURT: Well.

25 MR. WEINER: Ultimately you want to sell under

1 363.

2 THE COURT: You could put it all in the adversary.

3 MR. WEINER: Well, I have a -- we have a motion to  
4 sell under 363(f). I don't know that I need to go further  
5 than that.

6 THE COURT: Well, only again -- just that. I  
7 could take that motion that's now a contested matter, and  
8 create a contested matter scheduling order and have a  
9 contested matter scheduling order both together with the  
10 Tamar Fetman Adversary Proceeding. That's a little more  
11 awkward then --

12 MR. WEINER: Well, I could, you know, I could  
13 assert my 363(h) and partition actions in the counterclaim  
14 in that Adversary Proceeding.

15 I'm just looking to, you know, not create multiple  
16 proceedings and line up a ladder of expense --

17 THE COURT: Well, I guess you could --

18 MR. WEINER: -- a ladder of expenses.

19 THE COURT: -- well, if you could -- do you want  
20 to counterclaim and bring in the other parties on  
21 crossclaims, counterclaims.

22 MR. WEINER: Well, what would the claim against  
23 the parents be just to declare that the property belongs to  
24 the Debtor? I mean --

25 THE COURT: Yeah, I mean, or they have to bring

1 the AP. I mean somebody has to tee it up so we're all in  
2 one proceeding. And we make it nice and simple.

3 MR. WEINER: Well, if they want to bring a  
4 proceeding to impose a constructive trust I suppose. But  
5 why don't --

6 THE COURT: Again that would have to be done by  
7 Adversary Proceeding -- you would have to bring an  
8 Adversary Proceeding to impose a constructive trust.

9 MR. WEINER: But then we have to make motions.  
10 But I think the idea of having them brief the issue now  
11 might make her through all of that.

12 THE COURT: Well, that's fine.

13 MR. WEINER: So the --

14 THE COURT: I want to brief the issue now.

15 MR. WEINER: Right.

16 THE COURT: Why don't, okay, that would -- you  
17 could -- you could childcare in that adversary.

18 MR. WEINER: Right.

19 THE COURT: So we don't have three adversaries.

20 MR. WEINER: Right.

21 THE COURT: And you could commence an Adversary  
22 Proceeding for constructive trust. I mean, this is -- this  
23 wasn't a form of an Adversary Proceeding. Typically it's  
24 in the form of an adversary. But we haven't the trustee  
25 board Adversary Proceeding seeking a turnover. So those

1 are different cases.

2 I just want you to figure out procedurally how  
3 we're going to do this. And then we're going to do it that  
4 way.

5 MR. LEFKOWITZ: Your Honor, first of all, this is  
6 precisely the -- an unjust enrichment claim against Jacob  
7 Fetman, or the creditors.

8 THE COURT: Not against the creditors. It has to  
9 be against Jacob Fetman.

10 MR. LEFKOWITZ: Second, I did, I mean --

11 THE COURT: How is this an unjust enrichment claim  
12 against Jacob Fetman?

13 MR. LEFKOWITZ: If the -- if Moshe Fetman and  
14 Yaffa Fetman lose their property, and the property goes to  
15 someone else, whoever that someone else is is going to be  
16 unjustly enriched.

17 THE COURT: No, no, no. That's not -- to impose a  
18 constructive trust, Mr. Lefkowitz, please. Please, don't  
19 do the clients a disservice.

20 To impose a constructive trust you have to impose  
21 it on the party who has the legal title. And it is they  
22 who have to be guilty of the flawed, or the unjust  
23 enrichment. Not a creditor of theirs.

24 MR. LEFKOWITZ: I understand what you're saying.  
25 I'm just saying from my perspective --

1 THE COURT: What I'm saying is the law.

2 MR. LEFKOWITZ: Okay.

3 THE COURT: So you need to understand what I'm  
4 saying.

5 MR. LEFKOWITZ: I said somebody is going to be  
6 unjustly enriched. If my clients lose their property --

7 THE COURT: But that's not the issue. The issue  
8 is --

9 MR. LEFKOWITZ: Okay.

10 THE COURT: -- the issue is in constructive trust  
11 there's four elements. And again, when you read these  
12 decisions, again, I don't know how you come out from behind  
13 them, unless you want me to make new law in the 2nd  
14 Circuit.

15 MR. LEFKOWITZ: Well --

16 THE COURT: Which you know I could do.

17 MR. LEFKOWITZ: Your Honor, the -- as I said  
18 before, since it's a contested issue we are entitled to  
19 discovery. And I'm not really sure how I could file --

20 THE COURT: What is your discovery you would be --  
21 what -- from who? What are you discovering?

22 MR. LEFKOWITZ: Okay, we have --

23 THE COURT: Presumably your client is the one who  
24 is in possession of all the information. What is there to  
25 discover?

1                   MR. LEFKOWITZ: Your Honor, I can't -- before I  
2 even get to that, I can't really do anything. I don't see  
3 how I could file an Adversary Proceeding if my client has  
4 filed for exactly the same relief in state court.

5                   THE COURT: I don't know if it's exactly the same.  
6 You're wrong about that. Because the specific question  
7 here is once there was a bankruptcy petition filed by your  
8 client by coincidence an estate is created. It's all of  
9 the property of the estate. By filing that you said to  
10 them go sell everything. Okay? And now you're saying  
11 what's -- no, one of those things is mine, constructive  
12 trust. You need to bring an Adversary Proceeding for  
13 declaratory relief.

14                   Somebody needs to do it. I mean, again, I mean  
15 presumably your -- if she's saying she owns it, and you're  
16 saying you own it you're on opposite sides too. We all  
17 need to be in the same -- we all need to be sort of in the  
18 same proceeding here. Or to that -- consolidate it.

19                   Your adversary is to set aside the lien, which is a  
20 different issue.

21                   MR. WEINER: Yeah, that was -- exactly. That was  
22 just so that I could satisfy that element of 363(f) which  
23 requires that the lien [Inaudible, Crosstalk].

24                   THE COURT: Well, this was just for bidding  
25 procedures. Did this motion include, include (f) and (h)

1 of 363?

2 MR. WEINER: Yes.

3 THE COURT: It did?

4 MR. WEINER: Yes, it did. The last element is  
5 authorizing the sale free and clear of liens. So, yes it  
6 did.

7 THE COURT: Right. And then what about -- but  
8 that was before the -- let me look at it. It helps for me  
9 to be in the right case.

10 Oh, wait a minute. Okay, this is good. You didn't  
11 just sue the Trustee. You sued the Fetmans.

12 MR. WEINER: Yes.

13 THE COURT: Oh. Yes, and I asked for declaration  
14 regarding all the parties' interests in the property.

15 THE COURT: Oh, then you've already done that.

16 MR. WEINER: Yes.

17 THE COURT: So we've got it. That's only as to  
18 one of the two properties. But --

19 THE COURT: Oh.

20 MR. WEINER: Because, Tamar Fetman's name has  
21 never been on the other property. That one has been in  
22 Jacob's name since --

23 THE COURT: Okay, let me do this. Let me join,  
24 all right. And your motion, you said your motion -- I  
25 thought before you said something about that assuming you

1 go that, then you would have to --

2 MR. WEINER: If she was able to show that she was  
3 a CO-owner, then we would have to, you know, bring an  
4 action on 363(h), and [inaudible].

5 THE COURT: All right. So what I'm going to do is  
6 him going to treat your motion as a contested matter. Same  
7 rules apply. Or all the rules will apply as it if were an  
8 adversary proceeding.

9 Okay, so you're going to respond if you haven't  
10 already to that contested matter. You've all responded to  
11 it, correct, that motion?

12 MR. WEINER: Yes.

13 THE COURT: So you're answers are in. And I will  
14 -- when are we back here?

15 MR. WEINER: Well, we have the pre-trial  
16 conference in the Adversary Proceeding.

17 THE COURT: That's a different end. It was just  
18 filed an hour ago.

19 MR. WEINER: It was just filed. I don't believe  
20 the summons has been issued yet Judge.

21 THE COURT: Okay. All right. And you're okay for  
22 next week? Oh, it's this week.

23 MR. WEINER: We have the issue that there was some  
24 answer filed three weeks late without seeking permission to  
25 file a late answer.

1 THE COURT: Yeah, well I'll probably allow it, so.

2 MR. WEINER: I'm not quite sure what the rules are  
3 for if that can --

4 THE COURT: Because I haven't noted the default  
5 yet either, right?

6 MR. WEINER: I was going to ask you to do that on  
7 Thursday.

8 THE COURT: Well, but I probably wouldn't, you  
9 know. I don't note defaults when people walk in and say  
10 Judge give me a few days to file an answer.

11 MR. WEINER: All right, if --

12 THE COURT: They've already filed an answer.

13 MR. WEINER: That's how Mr. Lefkowitz called me.  
14 I would have given him time to answer.

15 THE COURT: All right. All right.

16 MR. WEINER: But he didn't. Instead he just  
17 served an answer three weeks late without even --

18 THE COURT: All right, Mr. Lefkowitz, you need to  
19 follow --

20 MR. WEINER: -- making an attempt to contact me.

21 THE COURT: -- the rules. Okay. There's an  
22 answer. What I'm trying to figure out is what are we going  
23 to do on the -- if it's a different case, and I'm just  
24 trying to figure out when we're going to do this.

25 Okay, so I'm going to do a contested matter

1 scheduling order on your motion, okay. Again, I'm not sure  
2 the issues of fact that are raised are together with his  
3 adversary.

4 MR. WEINER: Yes, that's true. There are  
5 certainly issues that --

6 THE COURT: And he's named everybody. So everyone  
7 is going to have to file an answer on his adversary and  
8 counterclaims. So it may be that I could just not do this,  
9 and carry this, right. If you've named everybody --

10 MR. WEINER: Well, I still think --

11 THE COURT: -- you can crossclaim, and  
12 counterclaim.

13 MR. WEINER: I still think we need this because  
14 that brings in the constructive trust issues and.

15 THE COURT: Well, no. I'm assuming that -- okay.

16 MR. WEINER: I don't think he's getting -- and  
17 plus this concerns both properties. And I don't think  
18 there is [inaudible].

19 THE COURT: All right, so I'm going to do a  
20 contested matter scheduling order on your motion. Okay.  
21 So I'll have the parties order to confer under Rule 26 by  
22 February 17.

23 Each party is ordered to file a brief statement  
24 summarizing its position regarding the matter, and include  
25 the following -- this doesn't -- this is the one where we

1 removed the discovery. This is a more recent one.

2 COURT CLERK: Okay.

3 THE COURT: We're pretty much printed one that's  
4 [inaudible] two forms.

5 COURT CLERK: Okay. [Inaudible]. Okay, 2/17 to  
6 confer. If you're going to have discovery.

7 I don't think pretty much discovery is needed here  
8 at all. I can't figure out what it would be. I mean,  
9 there's no discovery they can have from you.

10 MR. WEINER: Right. It's typical in a case. The  
11 Trustee doesn't have any direct knowledge, but just gets  
12 his or her knowledge from documents that other people have.

13 THE COURT: So let's conclude discovery by April  
14 18 so we're free before Passover. April 18, if there's any  
15 discovery by May -- by May 18, each party is required to  
16 file a brief statement summarizing its position. And we  
17 will hear -- and I'm also going to put in this one for  
18 dispositive motions, even though it's a contested matter  
19 because I'm going to treat it like an adversary.

20 You can -- if you -- if I consolidate the contested  
21 matter -- the contested matter with the adversary, which I  
22 think I can do. Or at least treat them together you can  
23 make the summary judgment in either place, all right. But  
24 the point is that -- or you can make the summary judgment  
25 motion.

1 Dispositive motions are going to have -- I'll have  
2 a deadline here for them. So the deadline for dispositive  
3 motions -- let's see discovery is -- May 13 for dispositive  
4 motions.

5 Court will commence hearing -- let's pick a date  
6 for the trial and the hearing.

7 When is the [inaudible] conference, the end of May?

8 COURT CLERK: Yes.

9 THE COURT: I want to make sure there is no  
10 holidays.

11 COURT CLERK: Right.

12 THE COURT: Jewish holidays.

13 COURT CLERK: Right. Right.

14 THE COURT: There aren't any?

15 MR. WEINER: I don't believe there are any during  
16 May.

17 THE COURT: No, June. I'm looking at June.

18 MR. WEINER: There is a holiday in June.

19 MR. CITRON: It's June 12 to 13.

20 THE COURT: Okay. June 7 is okay. Okay, June 7  
21 would be the trial, if there's a trial.

22 And the -- and the full hearing on the contested  
23 matter, again which we'll do together.

24 But I want briefs. I want briefs on the  
25 constructive trust because I don't -- I think we're all

wasting our time unless you have an argument. You know,  
unless you can tell me this law is not the applicable law.

3                   And that would be briefs on the issue of  
4 constructive trust, I want them soon.

5 MR. WEINER: It's their burden. Is it appropriate  
6 to have them do a brief, and then we respond to it?

7 THE COURT: Yeah, yeah. You can do that.

8                   Mr. Lefkowitz, how much time do you need for a  
9 brief?

10 MR. LEFKOWITZ: A month.

11                   THE COURT:    I just gave you the the law.  It's not  
12                   that hard.

15 THE COURT: That will be hard.

16                   MR. LEFKOWITZ: So therefore I need a month or  
17 more. It's going to be a long search.

18 THE COURT: I'm not giving you a month, come on.

19 I'll give you until February 22. So Moshe Fetman,  
20 and it's both the husband and wife, or just the husband?

21 MR. LEFKOWITZ: Both, Your Honor.

22 THE COURT: And the wife's name is?

23 MR. LEFKOWITZ: Yaffa, Y-a-f-f-a.

24 THE COURT: Yaffa. Moshe Fetman, and Yaffe's  
25 brief on the issue of composing a constructive trust is due

1 by February 22. And what do you want by way of response?

2 MR. WEINER: Two weeks Judge.

3 THE COURT: Okay. Two weeks is --

4 MR. WEINER: March 7.

5 THE COURT: March 7. Okay. So that's Trustee's  
6 response March 7.

7 MR. WEINER: Can we have argument on that shortly  
8 after that. Maybe if that issue gets resolved it may  
9 dispose of a lot of the other things in here.

10 THE COURT: When you say when the issue gets  
11 resolved, that's why I just said to you, you could make a  
12 dispositive motion on it.

13 MR. WEINER: Well, does he have -- if we do this  
14 briefing, and then we have, you know, argument on the issue  
15 of constructive trust.

16 THE COURT: Well, I didn't say we were going to  
17 argue on the issue. Let me see the briefs first and then  
18 we'll see where we are.

19 MR. WEINER: But if that issue gets resolved in  
20 either direction it may make a lot of everything except the  
21 issue of Tamar Fetman's --

22 THE COURT: Right.

23 MR. WEINER: -- the owner of the property may make  
24 everything else go away.

25 THE COURT: Right. But the Tamar Fetman issue --

1 right.

2 MR. WEINER: I'm not, you know --

3 THE COURT: Well, we're going to have -- we're  
4 going to adjourn the -- I'm going to adjourn your motion,  
5 which is now a contested matter to after the briefs are in.

6 MR. WEINER: Okay.

7 THE COURT: And then, you know, I'm going to --  
8 just like I would adjourn a pretrial.

9 And again you can file something that's like a  
10 summary judgment motion that says Judge there's no issues  
11 of fact. And on the issue on constructive law we win. And  
12 so therefore, you know, grant my motion to the extent that  
13 -- it could be partial -- but to the extent that these  
14 folks are not owners of the property. Okay?

15 MR. WEINER: I understand. So we're going to come  
16 back --

17 THE COURT: I'm going to have you come back after  
18 the briefs.

19 MR. WEINER: Okay.

20 THE COURT: And I'm going to assume, I'm going to  
21 try to track that with the pretrial, if I can do this  
22 right. With that pretrial.

23 MR. WEINER: Yes, I understand.

24 THE COURT: So I said your brief was due March 7.  
25 So we can come back the end of March. What have we got the

1 end of March?

2 COURT CLERK: You can [inaudible].

3 THE COURT: Oh, wait a minute.

4 MR. LEFKOWITZ: Your Honor, we have something --

5 THE COURT: Wait a minute. I'm first doing this.

6 March 29. Everybody got March 29 for coming -- that will

7 be the date we picked for the pretrial, because if you got

8 the summons today you've got thirty days to answer. And

9 we'll have the pretrial after that.

10 So the pretrial on the Tammy Fetman, and the  
11 adjourn date for the contested matter is March 29 okay?

12 MR. LEFKOWITZ: No, Your Honor, I have a trial in  
13 Manhattan on the 29.

14 THE COURT: Okay, I'll give you a different date.  
15 How long is it going to last?

16 MR. LEFKOWITZ: I couldn't say, Your Honor.

17 THE COURT: Okay, we'll give you a due date --  
18 we'll go before. Whatever you have the week before.

19 When is Purim?

20 MR. LEFKOWITZ: The 24.

21 COURT CLERK: The 22 Judge?

22 THE COURT: Yeah, we could do the 22.

23 COURT CLERK: At 2:30?

24 THE COURT: Okay. March 22 at 2:30. Right,  
25 that's not a fast day? The fast day would be the 23?

1 MR. LEFKOWITZ: Correct.

2 THE COURT: Okay, March 22 at 2:30.

3 MR. LEFKOWITZ: Now, what about the other pretrial  
4 or are we talking about the same one?

5 THE COURT: That pretrial and the adjourned  
6 contested matter on his motion are then. We have another  
7 pretrial this Thursday.

8 MR. LEFKOWITZ: Could we like put it on the same  
9 day as --

10 THE COURT: No, it's a different issue.

11 MR. WEINER: And then you had talked about having  
12 the trial or hearing on dispositive motions on June 7. I  
13 don't think we had a time for that.

14 COURT CLERK: 10:30.

15 THE COURT: 10:30. I'm going to upload a  
16 contested matter scheduling order.

17 MR. WEINER: Then I'll have all these dates and  
18 times.

19 MR. CITRON: If I may, Your Honor, I'm not -- I  
20 assume my appearance is not required on the 4, which is two  
21 days from now?

22 MR. WEINER: His client is not a party to the --

23 THE COURT: No.

24 MR. CITRON: Okay. The other thing is I heard --  
25 just for the sake of the record -- I heard Your Honor

1 mention that my client can seize the constructive trust  
2 area. I mean, I think it's -- I've stated this before, but  
3 it's now my client's position that she can seize the  
4 constructive trust --

5 THE COURT: I didn't say -- I don't know that she  
6 can seize the constructive trust period. I thought she was  
7 in agreement with the Debtor as to what the Debtor's story  
8 is with respect to the property. And the Debtor's story is  
9 that they are merely -- they merely have legal title.

10 MR. CITRON: Her testimony would be somewhat  
11 consistent with that. She's not qualified to testify.  
12 There's no conclusions that she was aware that there was an  
13 agreement, discussions of agreement between her husband and  
14 the parents.

15 THE COURT: Yes.

16 MR. CITRON: But she can't -- she can't testify --

17 THE COURT: Was that agreement ever reduced to a  
18 writing?

19 MR. CITRON: Not that I know of. And I don't know  
20 that she was a party to that agreement.

21 THE COURT: Right. I mean, the discovery is  
22 probably going to come from their side more than it's going  
23 to come from your side I think. Okay.

24 Anybody else want to be heard?

25 Okay. Thanks everybody.

1 MR. WEINER: Thank you Your Honor.

2 [End of Hearing]

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C E R T I F I C A T I O N

2 I, Phyllis P. Corella certify that the foregoing is a true  
3 and correct transcript of the reported proceedings held on  
4 February 2, 2016 in the matter of Jacob Fetman, Case Number  
5 15-43716, before Honorable Lord, and that the transcript page  
6 format is in conformance with the regulations of the Judicial  
7 Conference of the United States.

8  
9 Dated October 17, 2016

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12 S/S PHYLLIS P. CORELLA

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